

(SEE SIGNATURE PAGE FOR ATTORNEY LIST)

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Droplets, Inc.,

Plaintiff,

v.

YAHOO!, INC.

Defendant.

Case No. 12-cv-03733-JST

**JOINT CASE MANAGEMENT
STATEMENT**

OATH INC. AND OATH HOLDINGS, INC.

Intervenor-Plaintiffs,

v.

DROPLETS, INC.,

Intervenor-Defendant.

Case No. 12-cv-04049-JST (KAW)

DROPLETS, INC.

Plaintiff,

v.

NORDSTROM, INC.,

Defendant.

**JOINT CASE MANAGEMENT
STATEMENT**

Counsel for Plaintiff Droplets, Inc. (“Droplets”) and Defendants Yahoo! Inc. (n/k/a Altaba, Inc.) (“Altaba” or “Yahoo”), Nordstrom, Inc. (“Nordstrom”), and Intervenor-Plaintiffs Oath Inc. and Oath Holdings, Inc. (together d/b/a “Verizon Media”) (collectively, “Defendants”), submit this Second Joint Case Management Statement. Docket citations are to the *Yahoo!* Case (Case No. 3:12-cv-03733-JST) and *Nordstrom* Case (Case No. 3:12-cv-04049-JST). On February 20, 2019, the parties submitted the first Joint Case Management Statement following a nearly 5-year stay (*Yahoo!* Dkt. No. 318, *Nordstrom* Dkt. No. 119) and the Court issued a Scheduling Order on February 28, 2019 (*Yahoo!* Dkt. No. 320, *Nordstrom* Dkt. No. 121).

I. Jurisdiction and Service

This Court has subject matter jurisdiction over this action at least under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). Venue is proper in this Court pursuant to 28 USC §§ 1391 and 1400. All parties have been served, there are no issues relating to service of process.

II. Facts

Droplets’ Statement

A. Background

Droplets is an innovative software company that was founded in March 2000 by veteran software entrepreneurs with over 15 years of experience working and innovating together. Droplets has sold products based on its technology to Global 1000 enterprises, the U.S. armed services, independent software vendors, and application service providers. Its patents have been licensed to Fortune 500 companies, and they have survived invalidity challenges in high-stakes litigation. Here, Droplets asserts infringement of U.S. Patent Nos. 6,687,745 (“the ’745 patent”) against Yahoo and Nordstrom. The ’745 patent is directed to technology for delivering functional and scalable applications over the internet.

B. Procedural Posture

In May through September 2011, through prior counsel, Droplets asserted the ’745 patent and other patents, including U.S. Patent Nos. 7,502,838 (“the ’838 patent”) and 8,402,115 (“the ’115 patent”), in three cases filed in the Eastern District of Texas (“EDTX”) against several defendants.

1 After several severance and transfer orders, six actions existed in front of five courts. Relevant here,
 2 the cases against Yahoo and Nordstrom, where the asserted patents included the '745 and '838 patents,
 3 were transferred to this Court in July 2012, and the two cases were related on April 30, 2013.¹

4 On September 14, 2012, Google Inc. and Facebook Inc., defendants in related cases, filed a
 5 request for an *inter partes* reexamination of the '838 patent, and the Patent Office granted the request
 6 on November 15, 2012. On September 13, 2013, this Court stayed the *Yahoo!* and *Nordstrom* cases
 7 pending the *inter partes* reexamination of the '838 patent.

8 In yet another related case that remained in EDTX, on January 16, 2015, a jury found Sears
 9 and Overstock infringed the '745, '838, and '115 patents. The jury also determined that Droplets'
 10 patents were not obvious in light of the prior art presented at trial. The jury awarded \$11 million
 11 against Sears and \$4 million against Overstock. While post-trial motions were pending, the parties
 12 respectively reached a settlement, and the cases were dismissed.

13 The '838 patent was determined to be invalid in the *inter partes* reexamination, and this
 14 decision was affirmed by the Federal Circuit on October 17, 2017. On October 1, 2018, the Supreme
 15 Court denied Droplets' petition for a writ of certiorari to review the Federal Circuit's decision.²

16 The '745 patent is the remaining asserted patent in this case. The principal factual issues in
 17 dispute relate to whether the Defendants' products infringe, directly or indirectly, the '745 patent, the
 18 validity of the '745 patent, and damages. Importantly, the '745 patent has undergone *inter partes*
 19 reexamination, which was requested by Adobe Systems Inc. on August 3, 2007. The Patent Office
 20 did not invalidate any of the claims in that process – none of the original 26 claims of the '745 patent
 21 were amended or rejected and additional claims were added (claims 27 – 104).

22
 23 ¹ A third case against Williams Sonoma, Inc. also was transferred to this Court from the EDTX. *See*
 24 Case No. 3:12-cv-04047-JST. In that case, the parties filed a stipulation for dismissal on June 21,
 2013, and the case was dismissed on June 27, 2013.

25 ² Defendants in a related case in the Southern District of New York pursued *inter partes* review of the
 26 '115 patent. On April 19, 2018, the Federal Circuit affirmed the determination of the Patent Trial and
 27 Appeal Board that all claims of the '115 patent are invalid. In addition, on March 9, 2015, the SDNY
 28 court granted defendants' motion for summary judgment of noninfringement of the '745 patent. The
 parties filed a stipulation for dismissal on December 6, 2018, and the case was dismissed on December
 10, 2018.

1 ***Defendants' Joint Statement***

2 Plaintiff omits relevant procedural history from its recitation. On March 9, 2015, with full
 3 knowledge of the January 2015 jury verdict in Eastern District of Texas, summary judgment of non-
 4 infringement of the '745 patent was granted in favor of six defendants in a related case that was
 5 transferred to the Southern District of New York. *See Droplets Inc. v. E*Trade Financial Corp.*, et al.,
 6 No. 1:12-cv-02326, Dkt. No. 276 (S.D.N.Y. Mar 9, 2015). Summary judgment of non-infringement was
 7 granted after the court construed certain claim terms. In particular, the SDNY court construed
 8 "interactive link" to mean: "computer code that (1) retrieves and presents applications and/or information
 9 stored at remote locations across the network when selected by an end user, and (2) includes facilities for
 10 restoring previous operating states of the application as the application is re-presented at a user's computer.
 11 An interactive link cannot be a bookmark, cookie, shortcut, hyperlink or Internet address (URL)"—the
 12 same construction adopted by this Court. Droplets declined to appeal, and on December 10, 2018, it
 13 dismissed with prejudice the action in the Southern District of New York.

14 Defendants dispute Plaintiff's allegation that it has innovated any type of technology. They
 15 also deny infringement, under any theory, of any valid and enforceable claim of the '745 patent.
 16 Additionally, Defendants contend that the patent is invalid for failure to comply with one or more of
 17 the requisite statutory or decisional requirements and conditions for patentability under Title 35 of the
 18 United States Code, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules,
 19 regulations, and laws pertaining thereto. On November 26, 2019, Verizon Media intervened in the
 20 *Yahoo* matter because it contends that it owns all the past, present, or future patent infringement
 21 liabilities related to the Yahoo accused products. Yahoo/Verizon Media also contend that Plaintiff is
 22 barred from asserting its claims by, among other things, a license to practice the claims of the '745
 23 patent (*see ,e.g., Yahoo!* Dkt. Nos. 326 (Motion to Substitute) and 328 (Motion for Summary
 24 Judgment)). Further, Defendants contend that Plaintiff is barred from asserting its claims by, among
 25 other things, prosecution history estoppel and prosecution history disclaimer, and that waiver and other
 26 affirmative defenses apply. Finally, based on their investigation to date, Defendants contend that they
 27 were not on notice of the patent until service of the Plaintiff's Complaint in this action. Defendants
 28

1 also reserve the right to allege that the patent is unenforceable due to inequitable conduct by the
2 patentee.

3 **III. Legal Issues**

4 ***Droplets' Statement:***

5 The legal issues in dispute are: whether the '745 patent is valid under 35 U.S.C. §§ 101-103,
6 112; whether the patent is enforceable under those statutes and relevant rules; whether the accused
7 instrumentalities infringe the '745 patent under 35 U.S.C. § 271; the extent to which damages are
8 appropriate under 35 U.S.C. § 284, including past damages and supplemental damages for any post-
9 verdict infringement; and whether this is an exceptional case pursuant to 35 U.S.C. § 285 and the
10 extent to which an award of fees and costs is appropriate.

11 ***Defendants' Joint Statement:***

12 The legal issues in dispute include: whether the accused instrumentalities are licensed to
13 practice the '745 patent; whether the '745 patent is valid under 35 U.S.C. §§ 101-103, 112; whether
14 the patent is enforceable under those statutes and relevant rules; whether Defendants infringe the '745
15 patent under 35 U.S.C. § 271; the extent to which damages are appropriate under 35 U.S.C. § 284,
16 including past damages and supplemental damages for any post-verdict infringement; and whether
17 this is an exceptional case pursuant to 35 U.S.C. § 285 and the extent to which an award of fees and
18 costs is appropriate.

19 **IV. Motions**

20 **A. Prior Motions**

- 21 1. MOTION to Dismiss for Lack of Venue or, Alternatively, to Certify Under 28
22 USC § 1292(b) and Supporting Brief by Yahoo! Inc. (*Yahoo!* Dkt. No. 32),
23 which was later withdrawn (*Yahoo!* Dkt. No. 73)
- 24 2. MOTION to Change Venue Pursuant to 28 U.S.C. §1404(a) by Amazon.com,
25 Inc., Apple, Inc., Facebook, Inc., Google Inc., Yahoo! Inc., YouTube, LLC.
26 (Dkt. No. 84), which was granted (*Yahoo!* Dkt. No. 136)

3. MOTION to Compel / Yahoo!'s Motion to Compel Amended Infringement Contentions to Comply with Patent Rule 3-1 filed by Yahoo! Inc. (*Yahoo!* Dkt. No. 203), which was granted (*Yahoo!* Dkt. No. 258)
4. MOTION to Substitute Party and Amend Caption filed by Yahoo! Inc. (*Yahoo!* Dkt. No. 327), which was denied (*Yahoo!* Dkt. No. 411)
5. MOTION for Summary Judgment Based On License Agreement filed by Yahoo! Inc. (*Yahoo!* Dkt. No. 329), which was denied as moot (*Yahoo!* Dkt. No. 411)
6. MOTION for Preclusion re Claim Construction filed by Defendants (*Yahoo!* Dkt. No. 371, *Nordstrom* Dkt. No. 132) which was granted (*Yahoo!* Dkt. No. 412, *Nordstrom* Dkt. No. 154)
7. MOTION to Intervene filed by Oath Holdings Inc., Oath, Inc. (*Yahoo!* Dkt. No. 376), which was granted (*Yahoo!* Dkt. No. 419)

In addition, numerous procedural and administrative motions have been filed and resolved in the *Yahoo* case. Those motions include motions to file items under seal (*Yahoo!* Dkt. Nos. 326, 328, 334, 339, 348, 350, 357, 375, 386, 395), motions for extensions of time (*Yahoo!* Dkt. Nos. 17, 35, 37, 39, 78, 90, 98, 104, 107, 109, 310, 313, 315, 394, 398, 428), and motions to add or withdraw counsel (*Yahoo!* Dkt. Nos. 142, 144, 146, 147, 148, 152, 153, 154, 155, 156, 157, 162, 163, 165, 167, 168, 170, 174, 194, 195, 198, 209, 212, 282, 324, 364), various procedural motions in the Texas court (*Yahoo!* Dkt. Nos. 22, 72, 110, 112, 118), and a motion to stay (*Yahoo!* Dkt. No. 204).

Procedural and administrative motions were also filed and resolved in the *Nordstrom* case.

B. Pending Motions

On November 6, 2019, Droplets and Nordstrom filed a joint discovery letter brief in which Droplets requested that the Court compel Nordstrom to produce source code and documents to comply with Patent Local Rule 3-4(a). *Nordstrom* Dkt. No. 155. Discovery disputes were referred to Magistrate Judge Kendra Westmore. *Nordstrom* Dkt. No. 156.

On December 10, 2019, Defendants filed a Motion to Strike Droplets, Inc.'s Third Amended Infringement Contentions. *See Yahoo!* Dkt. No. 424, *Nordstrom* Dkt. No. 159. Droplets has opposed

1 and Defendants have replied. Briefing is complete and the motion is set for hearing on March 18,
2 2020.

3 **C. Anticipated Motions**

4 ***Droplets' Statement:***

5 Droplets is continuing to investigate what documents and information Yahoo failed to maintain
6 and/or has lost, and anticipates bringing a motion for the appropriate sanctions once its investigation
7 is complete. Droplets also may file discovery-related motions and motions for summary judgment of
8 infringement or of no invalidity.³ In addition, Droplets expects to file pretrial motions, such as motions
9 *in limine* and *Daubert* motions.

10 ***Defendants' Statement:***

11 Defendants anticipate filing dispositive motions, including a summary judgment motion of
12 non-infringement. In addition, Defendants expect the parties will file pretrial motions, such as motions
13 *in limine* and *Daubert* motions, and discovery motions. Defendants hope to avoid burdening the court
14 with discovery-related motions, however, very little discovery has taken place in this matter so the
15 necessity of such motions is unknown at this time. Moreover, Droplets' continued request for relevant
16 documents from Yahoo when it knows the relevant documents and information now reside with
17 Verizon Media could possibly lead to motion practice.

18 **V. Amendment of Pleadings**

19 ***Droplets' Statement:***

20 Droplets is awaiting discovery that fully shows that Verizon Media has a license to the '745
21 patent. Should Droplets discover facts during discovery that necessitate amending any pleadings,
22 Droplets will promptly seek leave of Court to do so.

23 ***Defendants' Statement:***

24 At this time, Defendants do not believe that the parties should be permitted to amend their
25 pleadings, including as to the named parties, claims, and defenses. As such, Defendants do not propose
26

27 ³ Yahoo has already filed a motion for summary judgment (*Yahoo!* Dkt. No. 411), and so must request
28 leave of the Court and show good cause to file an additional motion for summary judgment. Judge
Tigar Standing Order, Section F. Verizon Media must also request leave of the Court and show good
cause to file a motion for summary judgment. 2019-10-09 Hearing Tr. at 56:25-57:8.

1 a deadline or doing so. Should Defendants discover facts during discovery that necessitate amending
 2 any pleadings, Defendants will promptly seek leave of Court to do so. Further, to date, Droplets has
 3 not served any discovery on Verizon Media.

4 **VI. Evidence Preservation**

5 ***Droplets' Statement:***

6 Counsel for Droplets has conferred with its client and has taken reasonable steps to preserve
 7 readily-accessible evidence in its possession and control relevant to the claims or defenses in this
 8 action, including ESI. An agreed-upon ESI order based on the ESI guidelines has been entered in the
 9 *Yahoo!* action, *Yahoo!* Dkt. 250, and the parties in the *Nordstrom* action have begun working towards
 10 the same.

11 Droplets is also continuing to investigate what documents and information Yahoo failed to
 12 maintain and/or lost and anticipates bringing a motion for the appropriate sanctions once its
 13 investigation is complete.

14 ***Defendants' Statement:***

15 Counsel for the parties have conferred with their clients and have taken reasonable steps to
 16 preserve readily-accessible evidence in their possession and control relevant to the claims or defenses
 17 in this action, including ESI. An agreed-upon ESI order based on the ESI guidelines has been entered
 18 in the *Yahoo!* action, *Yahoo!* Dkt. 250, and the parties in the *Nordstrom* action have begun working
 19 towards the same.

20 Droplets' continued request for relevant documents from Yahoo when it knows the relevant
 21 documents and information now reside with Verizon Media is unwarranted. Tellingly, Droplets has
 22 not served a single discovery request on Verizon Media.

23 **VII. Disclosures**

24 The parties have served initial disclosures and exchanged infringement and invalidity
 25 contentions.

26 **VIII. Discovery**

27 **A. Discovery Taken to Date**

1 The parties served initial disclosures (and supplements thereto) and exchanged infringement
2 and invalidity contentions, along with accompanying document productions related to their
3 contentions.

4 Droplets has previously served Defendants with three common “ESI interrogatories” and three
5 other common interrogatories. Defendants had replied to all six interrogatories. Droplets has also
6 produced hundreds of thousands of pages of documents and made source code available for inspection.

7 On April 19, 2019, Droplets served Defendants with its second set of common interrogatories,
8 denominated as 4-8. On May 20, 2019, Yahoo and Nordstrom served their initial objections and
9 responses.

10 On May 10, 2019, Droplets served Altaba with Droplets’ first set of 132 document requests.
11 On June 10, 2019, Altaba served its initial responses and objections. Prior to Droplets serving these
12 requests, Yahoo had produced hundreds of thousands of pages of technical documents. In addition,
13 Verizon Media has now produced thousands of pages of additional technical documents in response
14 to a subpoena from Altaba.

15 On May 10, 2019, Droplets served Nordstrom with Droplets’ first set of 127 document
16 requests. On June 10, 2019, Nordstrom served its initial responses and objections. Since then,
17 Nordstrom has produced thousands of pages of responsive documents.

18 On June 7, 2019, Nordstrom supplemented its response to common interrogatories 1-3.

19 On June 18, 2019, Nordstrom served Droplets with Nordstrom’s first set of 13 interrogatories
20 and with Nordstrom’s first set of 27 document requests. Droplets served its initial responses and
21 objections on August 1, 2019.

22 On June 21, 2019, Droplets served its damages contentions. On July 26, 2019, Defendants
23 served their responsive damages contentions.

24 In July of 2019, Nordstrom made source code available for inspection. Droplets inspected it
25 that month, and then again after Nordstrom supplemented its production later that month.

26 On January 30, 2020, Verizon Media made source code related to the Yahoo Accused Products
27 available for inspection. Droplets is scheduled to inspect the source code from February 24, 2020
28 through February 28, 2020.

1 There has been only one deposition taken in this case, which related to Altaba's preservation
2 of relevant information.

3 Droplets contests that either Yahoo or Droplets has satisfied their document production
4 obligations under Patent Local Rule 3-4(a).

5 The parties recognize their continuing obligations under Federal Rule of Civil Procedure 26(e)
6 to supplement their disclosures as necessary.

7 **B. Limitations on Discovery**

8 The parties previously agreed to the following limitations on discovery (*see* February 20, 2019
9 Joint Case Management Statement (*Yahoo!* Dkt. No. 318, *Nordstrom* Dkt. No. 119)), disagreeing only
10 as to the two party-specific statements set forth below:^{4,5}

11 1. Interrogatories

12 Plaintiff may serve up to ten (10) Interrogatories stated identically to all Defendants and fifteen
13 (15) interrogatories stated individually to each individual Defendant.

14 Defendants may collectively serve up to ten (10) common interrogatories stated identically on
15 Plaintiff and may each individually serve up to fifteen (15) additional interrogatories on Plaintiff.

16 2. Requests for Admission

17 Except for authentication, admissibility, and/or whether a document qualifies as a prior art
18 under 35 U.S.C. § 102, Plaintiff may serve up to thirty (30) common requests for admission on
19 Defendants in this action, which each Defendant shall answer individually, and Plaintiff may serve an
20 additional ten (10) individual requests for admission on each Defendant in this action.

21 Similarly, except for authentication, admissibility, and/or whether a document qualifies as
22 prior art under 35 U.S.C. § 102, Defendants in this action, jointly, may serve up to thirty (30) common
23

24 ⁴ **Droplets' Statement:** For the limitations on discovery set forth in this Section, for purposes of
25 discovery of Droplets, Defendant Altaba and Intervenor-Plaintiff Verizon Media shall be treated
26 together as a single party (a defendant). Droplets, however, will be entitled to discovery of Defendant
Altaba and Intervenor-Plaintiff Verizon Media as distinct parties.

27 ⁵ **Altaba/Verizon Media's Statement:** For the limitations on discovery set forth in this Section,
28 Defendant Altaba and Intervenor-Plaintiff Verizon Media shall be treated together as a single party (a
defendant). Droplets should not be permitted to double the amount of discovery it can request related
to the Yahoo accused products simply because they were sold from Yahoo to Verizon Media.

1 requests for admission on Plaintiff, and each Defendant in this action may serve an additional ten (10)
2 individual requests for admission on Plaintiff.

3 In addition, the parties may serve an unlimited number of requests for admission to establish
4 the authenticity of documents, admissibility of documents, and/or requests for admission as to whether
5 a document qualifies as prior art under 35 U.S.C. § 102.

6 Requests for admission directed to document authentication, admissibility, and/or whether a
7 document qualifies as prior art under 35 U.S.C. § 102 shall be clearly denoted as such and shall be
8 served separately from any requests for admission subject to the numerical limitations stated above.

9 3. Fact Witness Depositions

10 The total number of non-expert deposition hours taken by each side, including Rule 30(b)(6)
11 depositions, third-party depositions, inventor depositions, and other individual depositions, shall not
12 exceed 250 hours.

13 As applied to Plaintiff, no more than 70 total deposition hours, or up to ten (10) separate
14 depositions, whichever occurs first, can be taken of a single Defendant in this action, including
15 30(b)(6) and 30(b)(1) depositions.

16 As applied to Defendants, no more than 70 total deposition hours, or up to ten (10) separate
17 depositions, whichever occurs first, can be taken of Plaintiff in this action, including 30(b)(6) and
18 30(b)(1) depositions.

19 ***Droplets' Statement:***

20 The parties will deem the depositions of the following four named inventors to be included in
21 this 70 hour/10 deposition limit of depositions of Plaintiff: Frank Leon Rose (Droplets Board member,
22 employee, and shareholder); Louis M. Franco (Droplets Board member, consultant, and shareholder);
23 Greg Blonder (Droplets Advisory Board member and shareholder); and Philip Brittan (former
24 Droplets Board member and current shareholder). The following three named inventors will not be
25 deemed to be included in this 70 hour/10 deposition limit of depositions of Plaintiff in this action:
26 Mark Cunningham; Alex Bulkin; and Matt Baskin.

27 ***Defendants' Statement:***

28

1 There are seven named inventors of the '745 patent, and even if those witnesses are also
 2 30(b)(1) or 30(b)(6) witnesses for Droplets, depositions of those inventors do not count against the
 3 limits in this paragraph, except (1) if those inventors are being deposed on topics unrelated to their
 4 role as inventors, the time on the record devoted to such topics shall count against the 70 hour total or
 5 (2) the deposition of any inventor as a Droplet's 30(b)(6) designee (on any topic) will count against
 6 the 10 deposition total. In no event will these limitations operate to deprive Defendants of the
 7 opportunity to depose a named inventor on inventor-related topics.

8 4. Expert Witness Depositions:

9 To the extent an expert report or disclosure of any expert witness testifying on behalf of
 10 Plaintiff is addressed to alleged activities (e.g., alleged infringement or damages) of more than one
 11 Defendant in this action, such expert may be deposed for an additional four (4) hours per additional
 12 Defendant in this action addressed, not to exceed thirty-five (35) hours regardless of the number of
 13 Defendants in this action addressed, and in no event shall any one Defendant in this action depose
 14 such expert concerning such report or disclosure for more than seven (7) hours.

15 To the extent an expert report or disclosure of any expert witness testifying on behalf of
 16 multiple Defendants in this action is addressed to alleged activities (e.g., alleged infringement or
 17 damages) of more than one Defendant in this action, such expert may be deposed for up to four (4)
 18 additional hours per additional Defendant in this action addressed not to exceed thirty-five (35) hours
 19 regardless of the number of Defendants in this action addressed, and in no event shall Plaintiff depose
 20 such expert concerning the alleged activities of any one particular Defendant in this action addressed
 21 in such report or disclosure for more than seven (7) hours.

22 **C. Cooperation in Discovery**

23 The parties agree to cooperate in good faith to minimize redundancy in discovery, such as with
 24 depositions of party witnesses.

25 **D. Protective Order and Discovery of ESI**

26 Droplets and Yahoo have agreed to ESI and protective orders. *See Yahoo!* Dkt. Nos. 250, 251.
 27 Verizon Media agrees to abide by these orders. Droplets and Nordstrom have agreed to a protective
 28 order, *Nordstrom* Dkt. 48, and have begun working towards an ESI order.

E. Privilege and Privilege Logs

By the time set out in the Proposed Schedule included in Section 17, the parties must exchange privilege logs indicating any material information otherwise discoverable that is being withheld as privileged. Fed. R. Civ. P. 26(b)(5). The parties have agreed by stipulation to Appendix A.

F. Service by Email

The parties agree that all documents will be served electronically by email, except that documents too large for email service shall be timely made available on an FTP or similar file-sharing service and accompanied by an email describing the documents served.

IX. Class Actions

This is not a class action.

X. Related Cases

There are currently no related cases pending before any court.

XI. Relief

Droplets seeks a judgment that each Defendant has infringed, directly and indirectly, one or more claims of the '745 patent; a judgment and order enjoining each Defendant, its employees and agents, and any other person(s) in active concert or participation with it from infringing, directly or indirectly, the '745 Patent; a judgment and order requiring each Defendant to pay Plaintiff's damages under 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed; a declaration that this is an exceptional case pursuant to 35 U.S.C. § 285 and an award of Plaintiff's attorneys' fees; in the event injunctive relief is not granted as requested by Droplets, an award of a compulsory future royalty; and an award of all costs of this action.

Defendants/Intervenor-Plaintiff seek a declaration that Defendants have not infringed, either directly or indirectly, the '745 patent; a declaration that the '745 patent is invalid or unenforceable; a declaration that this is an exceptional case under 35 U.S.C. § 285 and an award of reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees; and that the Court award any other further relief the Court may deem just and proper.

XII. Settlement and ADR

Droplets' Statement:

Droplets believes that settlement discussions may be beneficial for the parties. Droplets and Nordstrom are set to mediate the matter before Retired Judge Vaughn Walker on March 25, 2020. Droplets is willing to work with Yahoo to schedule a private mediation, and proposes the Court require the parties to seek private mediation thirty 30 days following the Case Management Conference (subject to mediator's availability).

Altaba/Verizon Media's Statement:

Altaba and Verizon Media believe settlement discussions may be beneficial to the parties. In that vein, they are willing to work with Droplets to schedule a private mediation.

XIII. Consent to Magistrate Judge for All Purposes

The parties do not consent to having a magistrate judge conduct all further proceedings including trial and entry of judgment.

XIV. Other References: None**XV. Narrowing of Issues*****Droplets' Statement:***

Droplets proposes the following process for limiting the number of asserted claims and asserted prior art references:

- 60 days before the end of fact discovery, Droplets limits the number of asserted claims against each Defendant to no more than ten (10) claims; and
- 30 days before the end of fact discovery, Defendants are required to reduce the number of asserted prior art references to no more than twenty (20) total between them (where a combination of references is counted as a reference for purposes here).

Droplets' proposal is predicated on the parties making good faith efforts to provide the relevant discovery sufficiently in advance of the proposed deadlines.

Defendants' Statement:

In response to Droplets' statement, Defendants are amenable to Droplets' limiting the number of asserted claims, and agrees that it should do so promptly. Plaintiff's request to limit the number of prior art references that Defendants may cite is premature and unwarranted. As this Court has stated,

1 “[w]hile a reduction in the number of claims provides obvious efficiencies to decide infringement and
 2 invalidity issues, similar efficiencies are not created by reducing the number of prior art references. In
 3 fact, it has little impact beyond the number of references considered in an expert report.” *DCG*
 4 *Systems*, C.A. No. 11-cv-03792 PSG, Dkt. No. 108 (N.D. Cal. Aug. 20, 2012) (Grewal, M.J.).

5 If Defendants are to limit the number of prior art references, the following schedule should
 6 apply. For purposes of this narrowing of prior art references, each obviousness combination counts
 7 as a separate prior art reference but each piece of evidence that comprises the combination, unless
 8 used as its own anticipatory reference, does not.

9 • No later than 30 days after the February 25, 2020, Scheduling Conference, Droplets
 10 shall limit the number of asserted claims to no more than 10 claims. No later than 30 days after
 11 receiving the list of narrowed claims, Defendants shall limit their prior art references to no more than
 12 20 references.

13 • No later than 28 days before the service of expert reports by the party with the burden
 14 of proof, Droplets shall limit the number of asserted claims to no more than 5 claims from among the
 15 10 asserted claims previously identified. By the date set for service of expert reports by the party with
 16 the burden of proof, Defendants shall limit their prior art reference to no more than 10 references from
 17 among the 20 prior art references previously identified.

18 **XVI. Expedited Trial Procedure**

19 The parties agree that it is not appropriate to expedite this case under the Expedited Trial
 20 Procedure of General Order No. 64.

21 **XVII. Scheduling**

22 ***Droplets’ Proposed Schedule:***

23 <u>PRETRIAL EVENTS</u>	<u>DEADLINES</u>
24 Deadline to exchange privilege logs	TBD (the parties to confer on the appropriate date 25 for the exchange)
26 Deadline for completion of all fact 27 discovery	Thursday, July 16, 2020

1	Deadline to designate expert witnesses and reports on issues for which the party bears the burden of proof	Thursday, August 20, 2020
2		
3	Deadline to designate expert witnesses and reports on issues for which the party does not bear the burden of proof	Thursday, September 17, 2020
4		
5	Deadline for completion of all expert discovery	Thursday, October 15, 2020
6		
7		
8	Deadline for dispositive and <i>Daubert</i> motions	Wednesday, November 11, 2020
9	Deadline for oppositions to dispositive and <i>Daubert</i> motions	Wednesday, November 25, 2020
10		
11	Deadline for replies to dispositive and <i>Daubert</i> motions	Wednesday, December 2, 2020
12		
13	Hearing on dispositive and <i>Daubert</i> motions	Wednesday, December 16, 2020 or subject to Court's availability
14	Pretrial Conference	Wednesday, January 27, 2021 or subject to Court's availability
15		
16	First Trial	Monday, February 8, 2021 or subject to Court's availability
17		
18	Second Trial	At least 3 weeks after the first trial, subject to Court's availability
19		

Defendants' Proposed Schedule:

21	<u>PRETRIAL EVENTS</u>	<u>DEADLINES</u>
22		
23	Deadline to exchange privilege logs	TBD (the parties to confer on the appropriate date for the exchange)
24		
25	Deadline for completion of all fact discovery	Friday, December 4, 2020
26	Deadline to designate expert witnesses and reports on issues for which the party bears the burden of proof	Thursday, January 21, 2021
27		
28		

Deadline to designate expert witnesses and reports on issues for which the party does not bear the burden of proof	Thursday, February 18, 2021
Deadline for completion of all expert discovery	Friday, March 17, 2021
Deadline for dispositive and <i>Daubert</i> motions	Thursday, April 15, 2021
Deadline for oppositions to dispositive and <i>Daubert</i> motions	Thursday, May 6, 2021
Deadline for replies to dispositive and <i>Daubert</i> motions	Tuesday, May 20, 2021
Hearing on dispositive and <i>Daubert</i> motions	June 2, 2021 or subject to Court's availability
Pretrial Conference	Subject to Court's availability
Trials	Subject to Court's availability, with the second trial occurring at least 3 weeks after the first trial

XVIII. Trial

The parties have demanded jury trials. Droplets' believes a 5-day trial (assuming approximately 7 hours of Court time per day) for each Defendant is sufficient. Defendants believe a 10-day trial is necessary in light of, *inter alia*, the disparate accused instrumentalities and the number of inventors.

XIX. Disclosure of Non-party Interested Entities or Person

Certificates of Interested Persons or Entities, Civil Local Rule 3-16, have been filed.

XX. Professional Conduct:

The attorneys of record have reviewed the Guidelines for Professional Conduct for the Northern District of California.

XXI. Other Matters

None.

Dated: February 19, 2020

/s/ Khue V. Hoang

Courtland L. Reichman (CA Bar No. 268873)
creichman@reichmanjorgensen.com
Shawna L. Ballard (CA Bar No. 155188)
sballard@reichmanjorgensen.com
Michael G. Flanigan (CA Bar No. 316152)
mflanigan@reichmanjorgensen.com
Kate M. Falkenstien (CA Bar No. 313753)
kfalkenstien@reichmanjorgensen.com
REICHMAN JORGENSEN LLP
100 Marine Parkway, Suite 300
Redwood Shores, CA 94065
Telephone: (650) 623-1401
Facsimile: (650) 623-1449

Khue V. Hoang (CA Bar No. 205917)
khoang@reichmanjorgensen.com
Jaime F. Cardenas-Navia
(admitted *pro hac vice*)
jcardenas-navia@reichmanjorgensen.com
REICHMAN JORGENSEN LLP
750 Third Avenue, Suite 2402
New York, NY 10017
Telephone: (212) 381-1965
Telecopier: (650) 623-1449

ATTORNEYS FOR PLAINTIFF
DROPLETS, INC.

/s/ Jennifer H. Doan (w/ permission)

Jennifer H. Doan
(admitted *pro hac vice*)
Texas Bar No. 08809050
Joshua R. Thane
(admitted *pro hac vice*)
Texas Bar No. 24060713
HALTOM & DOAN
6500 Summerhill Road, Suite 100
Texarkana, TX 75503
Telephone: (903) 255-1000
Facsimile: (903) 255-0800
Email: jdoan@haltomdoan.com
Email: jthane@haltomdoan.com

William A. Hector (SBN 298490)
WAHector@Venable.com
VENABLE LLP
101 California Street, Suite 3800
San Francisco, CA 94111
Telephone: (415) 653-3750
Facsimile: (415) 653-3755

ATTORNEYS FOR DEFENDANT
YAHOO! INC. and INTERVENOR
PLAINTIFFS OATH INC. and OATH
HOLDINGS, INC.

/s/ Benjamin M. Kleinman (w/ permission)

KILPATRICK TOWNSEND &
STOCKTON LLP
Jordan Trent Jones
(State Bar No. 166600)
jtjones@kilpatricktownsend.com
1080 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 752 2433
Facsimile: (650) 326 2422

Benjamin M. Kleinman
(State Bar No. 261846)
bkleinman@kilpatricktownsend.com
Two Embarcadero Center Suite 1900
San Francisco, CA 94111
Telephone: (415) 273-7122
Facsimile: (415) 723-7122

ATTORNEYS FOR DEFENDANT
NORDSTROM, INC.

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1

Pursuant to N.D. Cal. Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: February 19, 2020

/s/ Khue V. Hoang
Khue V. Hoang

Appendix A

Privilege and Privilege Logs

(a) Privileged materials created after the date of filing of this lawsuit need not be identified on a privilege log, unless a Defendant intends to rely on opinion of counsel as a defense to willfulness; Any documents or information not produced to the other side on the basis of privilege or discovery exemption will not be used as an exhibit at trial;

(b) Nothing in this Joint Report shall require production of information that a party contends is protected from disclosure by the attorney-client privilege, the work product immunity or other privilege, doctrine, right, or immunity. If information subject to a claim of attorney-client privilege, work product immunity, or other privilege, doctrine, right, or immunity is nevertheless inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver or estoppel as to any such privilege, doctrine, right or immunity. If any party inadvertently or unintentionally produces materials protected under the attorney-client privilege, work product immunity, or other privilege, doctrine, right, or immunity, any holder of that privilege, right, or immunity may obtain the return of those materials by notifying the recipient(s) promptly after the discovery of the inadvertent or unintentional production and providing a privilege log for the inadvertently or unintentionally produced materials. The recipient(s) shall gather and return all copies of the privileged or immune material to the producing party, except for any pages containing privileged markings by the recipient, which pages shall instead be destroyed and certified as such by the recipient to the producing party. Nothing herein shall prevent the receiving party from challenging the propriety of the attorney-client privilege or work product immunity or other applicable privilege or immunity designation by submitting a written challenge to the Court, during which the contested privileged materials may be submitted to the Court under seal/in camera for the Court by the party claiming privilege to determine whether any privilege applies. Such written challenge may include sufficient information regarding the content of the allegedly privileged materials in question to allow the challenging party to explain the basis for the challenge, provided that such information is submitted to the Court under seal/in camera. Notwithstanding this provision, no person is required to delete information that may reside on the respective person's electronic back-up systems that are over-written in the normal course of business.

Discovery from Experts

(a) Designation of Expert(s) and Report(s) by Party With the Burden of Proof: Unless otherwise stipulated or directed by order, each party must file a written designation of the name and address of each **expert witness** who will testify at trial on each issue for which that party bears the burden of proof. The party must also otherwise comply with Rule 26(a)(2) — including disclosure of the expert report(s) — by the time set out in the Proposed Schedule included in Section 17. Each party is limited to three testifying experts.

1 **(b) Designation of Expert(s) and Report(s) on Issues on Which the**
2 **Party Does Not Bear the Burden of Proof:** Each party must file a
3 written designation of the name and address of each **expert witness** who
4 will testify at trial on each issue for which that party does not bear the
burden of proof. The party must also otherwise comply with Rule
26(a)(2) — including disclosure of the expert report(s) — by the time
set out in the Proposed Schedule included in Section 17.

5 **(c) Rebuttal Expert(s):** If the evidence is intended solely to contradict
6 or rebut evidence on the same subject matter identified by another party
under Rule 26(a)(2)(B), the disclosures required under Rule 26(a)(2)
7 must be made within **30 days** after the disclosure made by the other
party. Fed. R. Civ. P. 16(b)(1).

8 **(d) Challenges to Experts:** The parties are directed to file any
9 objections to, or motions to strike or exclude expert testimony no later
10 than by the time set out in the Proposed Schedule included in Section
11 17.

12 **(e) Production Requirements for Experts:** A testifying expert's draft
13 reports, notes, and outlines of draft reports shall not be subject to
14 discovery in this case, nor shall any such drafts, notes, or outlines of
15 draft reports that the testifying expert prepared in other cases be subject
16 to discovery in this case. Discovery of materials provided to testifying
17 experts shall be limited to those materials, facts, consulting expert
18 opinions, and other matters actually relied upon by the testifying expert
19 in forming his or her final report, trial or deposition testimony, or any
20 opinion in this case. No discovery can be taken from any consulting
21 expert who does not testify, except to the extent that the consulting
22 expert has provided information, opinion, or other materials to a
23 testifying expert, who then relies upon such information, opinions or
24 other materials in forming his or her final report, trial or deposition
25 testimony, or any other opinion in this case. No conversations or
26 communications between counsel and any testifying or consulting
27 expert will be subject to discovery unless the conversations or
28 communications are relied upon by such experts in formulating opinions
that are presented in reports, trial or deposition testimony in this case.
Materials, communications (including e-mail), and other information
exempt from discovery under this paragraph shall be treated as attorney
work product for the purposes of this litigation.